

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

**C.P.(CAA)/109(ND)2022
IN
CA (CAA)/73/ND/2022**

Under Sections 230 to 232 of the Companies Act, 2013 read with Companies (Compromise, Arrangements ad Amalgamation Rules, 2016)

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

DS Drinks and Beverages Private Limited

CIN: U11500DL2013PTC254108

Reg. off: 4828/24, Prahlad Lane
Ansari Road, Daryaganj
New Delhi-110002

E-mail: ap.gupta@baba.in

**... Transferee Company/
Petitioner Company**

AND

Himachal Plywoods Private Limited

CIN: U20219HP1974PTC003495

Reg. off: No.1 Industrial Area,
Shamshi, Kullu,
Himachal Pradesh-175126

E-mail: ap.gupta@baba.in

**... Transferor Company/
Non-Petitioner Company**

Coram:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 20.01.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

1. This Company Petition filed by the Petitioner Company in connection with amalgamation between the Transferor and Transferee Company is coming before us for admission and for fixing a date of hearing of the main Company Petition as well as for a direction in relation to publication in press to be effected and notices to be issued to the authorities concerned in relation to date of hearing of the Petition and calling for the objections, if any, to the proposed Scheme of Amalgamation (hereinafter for brevity referred to as "SCHEME") as contemplated between the Petitioner Company and Non-Petitioner Company and their respective shareholders and creditors.
2. The Petitioner Company i.e., M/s. DS Drinks and Beverages Private Limited has registered office situated in New Delhi, it is therefore, within the jurisdiction of NCLT, New Delhi.
3. The Non-Petitioner Company i.e., M/s. Himachal Plywoods Private Limited has registered office situated in Himachal Pradesh, it is therefore, outside the jurisdiction of NCLT, New Delhi.
4. From the records, it is seen that the First Motion Application seeking direction for dispensation/convening the meeting of Shareholders, Secured Creditors and Unsecured Creditors was filed before this Bench vide CA (CAA) No. 73/(ND)/2022 and based on such application moved under Sections 230-232 of the Companies Act, 2013, this

Tribunal vide order dated 08.08.2022 (pronounced order) read with order dated 2nd September, 2022 has passed the following directions:-

- i) The requirement of convening the meeting of the shareholders and secured creditors of the Transferee Company/Petitioner Company is dispensed with.
- ii) The meeting of the unsecured creditors of the Transferee Company/ Petitioner Company was directed to be convened on Wednesday, 12th October, 2022 at 3:00 p.m. to consider and if thought fit, approve, with or without modification, the proposed scheme of Amalgamation.
- iii) The Applicant Company was directed to serve the notice of the Petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the concerned Income Tax Department; and to such other Sectoral Regulators or Authorities which are likely to be affected.

5. The Chairperson of the meeting of unsecured creditors of the petitioner company had placed on record Chairperson's report dated 12.10.2022 wherein it was stated that the required quorum was present and the resolution for the approval of scheme of amalgamation was approved, adopted and agreed with 100% votes in favor of the scheme.

6. The Petitioner Company had filed the affidavit of service dated 29.09.2022 for placing on record the proof of service of notice of meeting to the unsecured creditors of the Petitioner Company and proof of service of notice to the Statutory authorities as directed by this Tribunal in order dated 08.08.2022 (pronounced order) read with order dated 2nd September, 2022.

7. The Ld. Counsel for the Petitioner Company vide affidavit dated 07.11.2022 had placed on record the order dated 26th September, 2022 passed by Hon'ble NCLT, Chandigarh Bench

(C.A(CAAA)/41/Chd/HP/2022 wherein the Hon'ble NCLT, Chandigarh Bench had allowed the first motion application filed on behalf of M/s. Himachal Plywoods Pvt Ltd. (Transferor Company/ Non-Petitioner Company').

8. Thereafter this petition on second motion has come up before us for fixing a date of hearing as well as for other consequential directions in terms of provisions of Sections 230 to 232 of Companies Act, 2013 read with Rule 16 of the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016. Accordingly, it is now hereby ordered as follows: -

- (i) Notice of the hearing of the main Company Petition shall be advertised in two newspapers namely, "Business Standard" (English Delhi edition) and "Jansatta" (Hindi Delhi edition) not less than 10 days before the next date fixed for hearing the petition.
- (ii) In addition to the above public notice, each of the Petitioner Company shall serve the notice of the Petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the concerned Income Tax Department; and to such other Sectoral Regulators or Authorities which are likely to be affected, at least clear 30 days before the date fixed for hearing of the above Petition.
- (iii) The report of the Official Liquidator, Chandigarh in respect of the Transferor Company/ Non-Petitioner Company be placed on record.
- (iv) Further, notice shall also be served to Objector(s) or to their representative, if any, as contemplated under Sub-Section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of

the Petition and the annexures filed therewith at least 15 days before the date fixed for hearing.

- (v) The Petitioner Company shall at least 7 days before the date of hearing of the Petition file an affidavit of service in relation to paper publication effected as well as service of notices on the Authorities specified above including the Sectoral Regulator(s) as well as to Objectors, if any.
- (vi) Objections, if any, to the Scheme contemplated, by the Statutory Authorities to whom notice has been given may be filed on or before the date of hearing fixed herein may be filed, failing which it will be considered that the Statutory Authorities have no objection to the approval of the Scheme by this Tribunal and subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.
- (vii) The Petitioner Company shall individually comply with proviso to sub section (3) of Section 232 or proviso to sub section (7) of Section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of Company's Statutory Auditor.
- (viii) The next date of hearing of the Petition shall be on 10.03.2023 for the consideration of the approval of the Scheme of Amalgamation as contemplated between the Petitioner Company and Non-Petitioner Company.

Copy of the order be served to the parties.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (J)